
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)
)
Petition for approval of delivery services tariff revisions) Docket No. 01-0423
and of residential delivery services implementation plan,)
and for approval of certain other amendments and additions)
to its rates, terms, and conditions.)

**INITIAL BRIEF OF
TRIZECHAHN OFFICE PROPERTIES INC.**

GIORDANO & NEILAN, LTD.
Patrick N. Giordano
Paul G. Neilan
333 N. Michigan Avenue
Suite 2800
Chicago, Illinois 60601
PHONE: (312) 580-5480
FAX: (312) 580-5481
E-MAIL: patrickgiordano@dereglaw.com

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* NOTE: This Table of Contents includes only the sections and subsections from the Issues Outline for this case which are addressed in this Initial Brief of TrizecHahn Office Properties Inc.

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Now comes TRIZEHAHN OFFICE PROPERTIES INC., by its attorneys GIORDANO & NEILAN, LTD., and hereby files its initial brief in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”).

INTRODUCTION AND SUMMARY

TrizecHahn Office Properties Inc. (“TrizecHahn”) is the owner and operator of the Sears Tower and several office buildings that are located within the service territory of Commonwealth Edison Company (“ComEd”). TrizecHahn has been instrumental in the development of the competitive electricity market in Illinois through execution of contracts with Alternative Retail Electric Suppliers (“ARES”) for the Sears Tower and its other buildings. TrizecHahn has

intervened and actively participated in this proceeding due to the incredibly adverse impact that ComEd's proposed changes in its delivery services tariffs would have on TrizecHahn's buildings and other similarly situated ComEd customers who purchase ComEd's electricity delivery services for purposes of receiving delivery of competitive electricity supply. For example, authorization of ComEd's rate increase request filed on June 1, 2001 would increase ComEd's distribution facilities charges for nonresidential customers in the over 10 MW class from its current level of \$1.92/kW to \$4.14/kW assuming that these demand-based charges are not ratcheted on an annual basis, an incredible 116% increase. (ComEd Exhibit 32.0, Attachment C page 3).

Although ComEd decreased the proposed rate increase for the over 10 MW class slightly in the panel surrebuttal testimony of Lawrence Alongi and Sharon Kelly after the huge hike was challenged aggressively by TrizecHahn and other intervenors, ComEd's proposal would still result in an absurdly high 82% increase in distribution facilities charges from \$1.92/kW to \$3.50/kW for over 10 MW customers based on unratcheted demands. (Tr. 1298-99; ComEd Exhibit 55.0 at 10, ln. 177-180 and Attachment D page 3). This increase is outrageous because ComEd's demand-based distribution facilities charges make up almost all of ComEd's charges for distribution of electricity (with the exception of small customer and metering charges and Customer Transition Charges) because there are no energy charges for nonresidential customers in ComEd's Rate RCDS. (ComEd Exhibit 13.0, Attachment C). Moreover, ComEd has exacerbated the adverse effects on its delivery services customers by proposing an over 100% increase in its transmission services requirement with the Federal Energy Regulatory Commission ("FERC") (Tr. at 1310), which would cause an increase in transmission charges for

the over 10 MW customer class from the current 0.228¢/kWh to 0.409¢/kWh according to ComEd's own estimate. (ComEd Exhibit 41.0 at 16, line 382; Tr. at 3293-94).

There are two primary reasons for ComEd's massive proposed increase in its charges for distribution of electricity for over 10 MW customers. The first reason is the tremendous increase in ComEd's requested revenue requirement for its delivery services customers (i.e., 47% according to ComEd), which has an adverse impact on all delivery services customers by increasing average unit charges by 37% after adjusting for the impacts on ComEd's revenue requirement of increased customer growth. (Tr. at 3306). The second reason is ComEd's proposed Rider HVDS – High Voltage Delivery Service (“Rider HVDS” or “HVDS”), which would provide a massive credit of \$2.27/kW on unratcheted distribution facilities charges for the small number of ComEd's high voltage customers that are served by ComEd at 69,000 volts (“69 kV”) or higher. (ComEd Exhibit 50.0 at 10, ln. 177-180, Attachment D page 3; Tr. at 1084). This massive proposed credit has the effect of dramatically increasing the distribution facilities charges for over 10 MW customers served at less than 69 kV because under ComEd's proposed rate design these customers offset the huge revenues lost by ComEd as a result of the massive proposed credit for high voltage customers in this class. (Tr. at 1087-88; ComEd Exhibit 50.0, Attachment C page 3).

With respect to revenue requirement issues, TrizecHahn supports the positions stated by Governmental and Consumer Intervenors (“GC”) in GC's Initial Brief. ComEd's revenue requirement would be significantly reduced if the Commission accepts GC's positions. Additionally, TrizecHahn urges the Commission to support Commission Staff's recommendation that the Commission initiate a management audit and investigation of ComEd under Section 8-102 of the Public Utilities Act (220 ILCS 5/8-102) to examine the reasonableness, prudence, and

efficiency of ComEd's operations, costs management, decisions, and functions for the period leading up to, and during, calendar year 2000. As both Staff's November 30, 2001 Report to the ICC recommending such an audit and GCI's October 24, 2001 Petition to the Commission for Investigation and Audit have pointed out, ComEd's appropriate revenue requirement for delivery services based on ComEd's test year 2000 cannot be established until such a management audit and investigation is completed.

Even if an appropriate ComEd revenue requirement for delivery services is ultimately adopted by this Commission, however, distribution facilities charges for over 10 MW customers will still be much too high if ComEd's proposed rate design, including its massive HVDS credit for customers served at 69 kV or higher, is adopted by this Commission. Therefore, this Initial Brief of TrizecHahn Office Properties Inc. will focus primarily on the reasons that the Commission should reject ComEd's proposed HVDS credit.

First and foremost, ComEd's proposed HVDS credit is highly anticompetitive because over 10 MW electricity users served at less than 69 kV do not have to offset a large credit for high voltage customers if they purchase their electricity supply (as well as delivery) from ComEd pursuant to ComEd's tariffs for bundled electricity supply and delivery ("bundled tariffs"). Instead, these customers must offset a credit for 69 kV and above customers of only 10.138¢/kW, which is ComEd's Rider 11 credit currently applicable to both ComEd's bundled services and delivery services customers, as opposed to the \$2.27/kW credit on unratcheted distribution facilities charges now proposed by ComEd in this case. (TrizecHahn Exhibit 1.0CR at 7-8, ln. 145-158; ComEd Exhibit 50.0 at 10, ln. 177-180 and Attachment D, page 3).

This inequity not only is anticompetitive but also violates the statutory requirement of Section 16-108(c) of the Public Utilities Act that delivery services be priced and made available

to all retail customers electing delivery services on a nondiscriminatory basis regardless of whether they choose the electric utility (i.e., ComEd) or an alternative entity for their electric supply. (220 ILCS 5/16-108(c)). In addition to being anticompetitive and discriminatory against customers choosing competitive supply over ComEd supply, ComEd's proposed HVDS credit is not cost-based as demonstrated by the testimony of BOMA witness Sheree Brown. (BOMA Exhibit 1.0 at 20-25, ln. 436-523). Moreover, ComEd has interpreted the language of its proposed Rider HVDS credit in a restrictive manner which makes the Sears Tower and other similarly situated customers ineligible for the credit even though there is a strong argument that the Sears Tower meets the tariff's eligibility requirement that ComEd's lines enter the customer's premises at 69 kV or higher. Under ComEd's restrictive interpretation, only nine over 10 MW customers currently on delivery services are eligible for the credit while thirty-one over 10 MW customers currently on delivery services are ineligible. (BOMA Exhibit 1.0 at 26, ln. 552-57).

In short, ComEd's proposed HVDS credit should not be adopted by the Commission because it is anticompetitive, discriminatory, restrictive and not cost-based, and because it causes massive adverse rate impacts on over 10 MW customers. Additionally, the Commission should reject the annual demand ratchet on ComEd's distribution facilities charges proposed by ComEd. Like Rider HVDS, the annual demand ratchet is highly anticompetitive and discriminatory against electricity customers who choose an entity other than ComEd for their electricity supply because ComEd's bundled tariffs do not have such a ratchet. (TrizecHahn Exhibit 1.0CR at 9, ln. 184-197). Rather than approve these radical changes to ComEd's rate design at this time, the Commission should implement whatever revenue requirement it deems appropriate for nonresidential customers on an across-the-board basis to all customer classes and recommend to

ComEd that it consider proposing these changes if it still feels they are appropriate when and if it proposes corresponding changes to its tariffs for purchase of bundled electricity supply and delivery to avoid anticompetitive and discriminatory effects. (TrizecHahn Exhibit 1.0CR at 11, ln. 236-42).

I. LEGAL ISSUES AND STANDARDS FOR DECISION

A. Substantive Standards and Policies Governing Requested Rates.

The statutory standards for review of the delivery services tariffs filed by ComEd in this case are set out in Section 16-108 of the Public Utilities Act (“the Act”). (220 ILCS 5/16-108). Section 16-108(a) of the Act provides, in relevant part, that the Commission has the authority pursuant to Article IX of the Act to review, approve and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the FERC. (220 ILCS 5/16-108(a)).

As the Commission well knows, the Commission cannot approve utility rates under its Article IX authority unless the Commission finds that the rates are “just and reasonable.” (220 ILCS 5/9-101, 9-201). The “just and reasonable” requirement is also reiterated in Section 16-108(d) of the Act, which also specifically requires that the Commission consider customer impacts and take into account voltage level differences in establishing delivery services charges. (220 ILCS 5/16-108(d)). Pursuant to Section 9-201(c) of the Act, ComEd has the burden of

proving the justness and reasonableness of its proposed rates, in whole or in part, when the Commission enters upon a hearing such as the instant case. (220 ILCS 5/9-201(c)).

For purposes of the Commission's consideration of ComEd's two proposed major changes to its rate design which are being challenged by TrizecHahn — a massive credit for customers served at 69 kV or higher (i.e., Rider HVDS) and an annual demand ratchet on its distribution facilities charges — the following language of Section 16-108(c) of the Act is also relevant and critical:

Delivery services shall be priced and made available to all retail customers electing delivery services in each such [customer] class on a nondiscriminatory basis regardless of whether the customer chooses the electric utility, an affiliate of the electric utility, or another entity as its supplier of power and energy. Charges for delivery services shall be cost-based, and shall allow the electric utility to recover the costs of providing delivery service through its charges to its delivery services customers that use the facilities and services associated with such costs.

(220 ILCS 5/16-108(c)).

In short, Section 16-108(c) of the Act requires that delivery services tariffs be nondiscriminatory with respect to whether an electricity user chooses ComEd or an alternative entity as its electricity supplier. This Section also requires that charges for delivery services be cost-based. However, Illinois law is clear that cost of service is not, and has never been, the only criterion when the Commission makes its determination regarding a utility's rate design. In fact, the Commission has a long history of taking into account non-cost of service factors in designing utility rates, even when it was not statutorily required to specifically consider customer impacts as they are now required to do in determining delivery services tariffs by Section 16-108(c) of the Act. Moreover, the Commission's practice of considering non-cost of service factors in designing utility rates has been upheld by the courts.

In City Of Chicago v. Illinois Commerce Commission, 133 Ill. App. 3d 435, 478 N.E.2d 1369 (1985), the Illinois Appellate Court upheld the Commission's decision to allocate ComEd's 19.4% rate increase evenly "across the board" among its different customer classes. (478 N.E.2d at 1375-76). Certain intervenors in that case had challenged the "across-the-board" allocation before the Commission and in the Appellate Court on grounds that it ran counter to cost of service studies that indicated a lower cost-based rate for the intervenors. (478 N.E.2d at 1375-76). In upholding the Commission's across-the-board revenue requirement allocation, the court specifically recognized that considerations of rate continuity and the desirability of making changes gradually can properly limit changes in rate design. (478 N.E.2d at 1376).

Two other cases in which the Commission has specifically considered customer impacts (such as rate continuity and rate shock) are ComEd's electric service general rate increase request in 1994 (ICC Docket No. 94-0065, 1995 Ill. PUC LEXIS 25) and Union Electric Company's electric service general rate increase request in 1985 (ICC Docket No. 85-0006, 1985 Ill. PUC LEXIS 34). In ComEd's 1994 rate case, the Commission found that a gradual movement towards cost-based rates rather than rates based on ComEd's cost-of-service study was appropriate in order to balance cost concerns with the need to avoid unacceptable rate shock, even though ComEd's requested rate increase was only 7.9%. Consequently, the Commission allocated the rate increase to the customer classes within a fairly close range. (ICC Docket No. 94-0065, January 9, 1995, 1995 Ill. PUC LEXIS 25, 216-17). In the 1985 Union Electric rate case, the Commission approved only a very slight movement towards cost-based rates in light of "the importance of rate continuity and customer acceptance in developing Commission policy." (ICC Docket No. 85-0006, May 8, 1985 Order, 1985 Ill. PUC LEXIS 34, 121-22).

In determining whether to approve the radical proposed changes to ComEd's delivery services rate design of a massive high voltage credit and an annual demand ratchet on ComEd's distribution facilities charges, the Commission not only must add to its long history of considering rate shock and rate continuity but also must consider the discriminatory effects on choice between the utility and alternative entities as it is currently doing in the telecommunications arena. As this brief will discuss, infra, neither of ComEd's proposals have a solid cost basis in this record. Moreover, the increased HVDS credit is not necessary to satisfy the statutory requirement to take into account voltage level differences in setting delivery services tariffs because ComEd's current size-based rate structure and current credit for service at 69 kV or higher already satisfy this statutory requirement, as ComEd witness Paul Crumrine testified in ComEd's last delivery services rate case. (TrizecHahn Cross Exhibit 11.0 at 4-7, ln. 81-136). Therefore, ComEd's radical proposals must be rejected because they cause rate shock, disrupt rate continuity and are anticompetitive, restrictive and discriminatory as further discussed below.

C. Other Policy Issues

1. Impact on Customers

a. Rate Shock and Rate Continuity

Of course, one of the chief adverse customer impacts to be avoided in designing rates is unacceptable rate shock. As discussed supra, the Commission has considered rate shock in determining ComEd's rate design in a case in which the requested rate increase was only 7.9%. (ICC Docket No. 94-0065, 1995 Ill. PUC LEXIS 25). In the instant case, ComEd has proposed

average increases in unit charges of 37% (Tr. at 3306) and increases in unratcheted distribution facilities charges of 82% from \$1.92/kW to \$3.50/kW for over 10 MW customers who are ineligible for ComEd's proposed high voltage credit. (Tr. 1298-99; ComEd Exhibit 55.0 at 10, ln. 177-180 and Attachment D page 3). Especially in light of the fact that ComEd customers entered into contracts to purchase from alternative entities based on ComEd's current delivery services tariffs (TrizecHahn Exhibit 1.0CR at 4, ln. 73-76), the rate shock caused by an 82% increase in charges for certain customers absolutely must be considered by the Commission in rendering its decision in this case.

Continuity in rate design also has been a prime consideration of the Commission in setting rates. (ICC Docket No. 94-0065, January 9, 1995 Order, 1995 Ill. PUC LEXIS 25 at 216-17; ICC Docket No. 94-0040, December 12, 1994 Order, 1994 Ill. PUC LEXIS 577 at 158; ICC Docket No. 85-0006, May 8, 1985 Order, 1985 Ill. PUC LEXIS 34 at 121). In the instant case, the Commission must consider whether the abrupt 2000% increase from a high voltage credit of 10.138¢/kW to ComEd's proposed credit of \$2.27/kW assuming unratcheted demands (ComEd Exhibit 50.0, Attachment B page 3) and its resulting huge adverse impacts on those over 10 MW customers that are ineligible for the credit should be made in light of rate continuity considerations. Likewise, ComEd's proposal to assess its distribution facilities charges based on an annual demand ratchet is also a disruptive change which must be judged by the Commission in light of the ratemaking goals of maintaining rate continuity as well as avoiding rate shock.

Business customers expect periodic rate increases, but they rely on a basic continuity of utility rate design in their business planning. Such reliance is not only reasonable, but indispensable to the health of a business. ComEd's rate design proposals represent radical departures from its existing delivery services rate design and, if approved, will detrimentally

affect customers who legitimately relied on the basic continuity of ComEd's delivery services tariffs when they entered into contracts for competitive electricity supply.

b. Discriminatory Effects

As mentioned supra, Section 16-108(c) of the Act requires that delivery services be priced and made available to all retail customers electing delivery services in each customer class on a nondiscriminatory basis regardless of whether the retail customer chooses the electric utility or another entity as its supplier of electricity. (220 ILCS 5/16-108(c)). In telecommunications, the Commission has consistently endeavored to insure that Competitive Local Exchange Carriers ("CLECs") are allowed to purchase elements of the local telephone utility's system necessary for the CLECs to provide local telecommunications services at prices which reflect the utility's own cost of using the service so that the CLECs' customers are not subjected to discrimination. (e.g., ICC Docket No. 01-0662, Order Initiating Investigation, 2001 Ill. PUC LEXIS 1006 at 3-4). A basic concept of competition in the telecommunications market is that pricing of unbundled network elements to competitors be nondiscriminatory. (1996 Telecommunications Act, Section 252(d)(1)(A)(ii), 47 U.S.C. Sec. 252(d)(1)(A)(ii)). The same principle applies here, where ComEd must not be allowed to price its delivery services in a discriminatory fashion that prevents customers from choosing entities other than ComEd as their electricity supplier.

ComEd's proposed rate design is discriminatory because an over 10 MW customer using a competitive retail electric supplier will suffer an 82% increase in ComEd's distribution facilities charges (from \$1.92/kW to \$3.50/kW) under ComEd's proposed rate design based on

unratcheted demands because ComEd's rate design requires the customer to offset an HVDS credit of \$2.27/kW for 69 kV and above customers (ComEd Exhibit 50.0, Attachment D page 3), while that same customer has to offset only the existing credit of 10.138¢/kW currently applicable to both ComEd's delivery services and bundled services customers if that customer is on ComEd's bundled electricity supply and delivery tariffs. (TrizecHahn Exhibit 1.0CR at 7, ln. 145-152). This overwhelming inequity is the antithesis of delivery services priced on a nondiscriminatory basis. Contrary to Section 16-108(c) of the Act, ComEd's rate design retards rather than advances competition by imposing a massive surcharge on certain customers that choose a competitive supplier.

2. Impact on the Development of an Effectively Competitive and Efficient Electricity Market.

ComEd's proposed increases in delivery services charges and changes in rate design will undermine the development of a competitive and efficient market for electricity in the ComEd service territory. Specifically, the absurdly high rate increases for customers in the over 10 MW class who are ineligible for the Rider HVDS credit are a severe blow against the very customers who have led the development of a competitive market in Illinois by taking the risk of purchasing from a competitive supplier during the initial stages of Illinois' competitive market. On the other hand, adoption of the large proposed HVDS credit is unnecessary and inappropriate to encourage those eligible for the credit to take advantage of the competitive market because these customers already receive the same ComEd Rider 11 credit (of 10.138¢/kW) for service at high voltage under both ComEd's bundled and delivery services tariffs and should continue to do so. (TrizecHahn Exhibit 1.0CR at 8, ln. 153-58).

II. REVENUE REQUIREMENT ISSUES

TrizecHahn supports the position of GC on revenue requirement issues with the exception of cost of service and rate design issues. Therefore, this Initial Brief of TrizecHahn Office Properties Inc. will address only the “Cost of Service and Rate Design” and “Rate Design” headings (II.F. and II.G.) of the Issues Outline for this case.

F. Cost of Service and Rate Design

1. Cost of Service Study Issues

As discussed supra, ComEd has proposed that its delivery services tariffs be based on ComEd’s marginal cost study but has also taken the position that use of its embedded cost study would be acceptable to ComEd. (ComEd Exhibit 1.0 at 16, ln. 422-26). Commission Staff and GC have advocated that rates be designed based on ComEd’s embedded cost study but both have proposed several adjustments to the study. (GC Exhibit 1.0 at 8-10; ICC Staff Exhibit 6.0). IIEC has attacked both ComEd’s marginal cost study and its embedded cost study on several grounds and has advocated that any revenue requirement increase be allocated as an across-the-board increase to ComEd’s current nonresidential delivery services tariffs, which are based on the embedded cost study filed by ComEd in ICC Docket No. 99-0117. (IIEC Revised Exhibit 2 at 10-17). For example, according to IIEC witness Alan Chalfant, ComEd’s marginal cost study is really a “replacement cost” study rather than an appropriate “marginal cost” study. (Tr. at 2527-28). Due to the significant issues regarding whether either the embedded cost study or the marginal cost study presented by ComEd in this case properly calculate ComEd’s costs of

delivery services, TrizecHahn urges the Commission to allocate any revenue requirement increase to nonresidential customers including TrizecHahn's buildings on an equal percentage across-the-board basis to all nonresidential customer classes.

2. Interclass Revenue Allocation

TrizecHahn's position on revenue allocation is that all nonresidential customer classes should receive the same percentage increase as the percentage revenue requirement increase granted by the Commission and that the remaining revenue requirement should be assigned to residential customers and allocated among the residential customer classes in proportion to the relative embedded cost shares within each class. As IIEC witness Alan Chalfant testified, use of ComEd's embedded cost study to allocate charges to residential customers in this manner should not produce distortions because most residential customers are served at the same voltage levels and it is voltage level problems that seemed to have caused the problems in ComEd's embedded cost study.¹ (IIEC Revised Exhibit 2 at 17, ln. 5-8).

¹ In the event that the Commission rejects TrizecHahn's across-the-board revenue allocation recommendation, TrizecHahn does not have a position at this time on whether ComEd's embedded cost or marginal cost study should be used to design ComEd's rates. However, it must be noted that ComEd has calculated based on its embedded cost study an even higher HVDS credit of \$3.54/kW (on unratcheted demands) and a corresponding higher distribution facilities charges for over 10 MW customers of \$5.53/kW than the HVDS credit and corresponding distribution facilities charge calculated by ComEd based on its marginal cost study. (ComEd Exhibit 32.0, Attachment G, page 3). ComEd has testified that this HVDS credit based on the embedded cost study is not acceptable to ComEd (Tr. at 3289). This evidence underscores the necessity to reject ComEd's proposed Rider HVDS.

G. Rate Design

1. RCDS Rate Design

a. Demand Ratchet

i. General Service Ratchet

ComEd has proposed that the distribution facilities charges for nonresidential customers in Rate RCDS be ratcheted on an annual basis. ComEd's stated reason for instituting an annual demand ratchet is that this is "the way to properly allocate delivery services costs within a class to the customers who actually use the most facilities and services." (ComEd Ex. 12.0 at 14, ln. 324-325). ComEd also requested an annual demand ratchet on its distribution facilities charges in ICC Docket No. 99-0117. However, the Commission rejected ComEd's request in that proceeding on the following grounds:

The Commission has not looked favorably on demand ratchets in prior rate proceedings. Ratchets prevent customers from having control over a substantial portion of their bills for a year. The customer is forced to pay high demand charges even if there is an economic downturn, while the utility is insulated from the same downturn.

(ICC Docket No. 99-0117, August 26, 1999 Order at 64).

The Commission *must* take the same action that it did in the last case and reject ComEd's request for an annual demand ratchet. The proposed annual demand ratchet is highly anticompetitive because an electricity user who purchases both electricity supply and delivery from ComEd pursuant to its bundled tariffs is not subject to an annual demand ratchet and will continue to have its demand charge assessed on its monthly peaks in demand. (TrizecHahn Exhibit 1.0CR at 9, ln. 184-87). Consequently, an electricity customer will have a major

disincentive to leave ComEd's bundled tariffs and buy from a competitor if ComEd's delivery services charges are subject to an annual demand ratchet where one spike in demand will set the basis for the demand charge for an entire year. (TrizecHahn Exhibit 1.0CR at 9, ln. 187-190). Moreover, the proposed annual demand ratchet is extremely unfair to electric space heating customers including TrizecHahn's Sears Tower and 2 N. LaSalle buildings which have their peaks in electricity demand in the winter. (TrizecHahn Exhibit 1.0CR at 10, ln. 203-05).

Since ComEd is a summer peaking utility, its system must be built to meet its summer peak. (TrizecHahn Exhibit 1.0CR at 10, ln. 206-07). Clearly, an annual demand ratchet does nothing to encourage the reduction of summer peaks for electric space heating customers. (TrizecHahn Exhibit 1.0CR at 10, ln. 207-08). In fact, the annual demand ratchet would actually encourage summer usage for space heating customers because summer-based distribution facilities charges will be based on their winter peaks. (TrizecHahn Exhibit 1.0CR at 10, ln. 208-11). This is a radical shift from ComEd's bundled tariffs for supply and delivery where there is no demand charge at all for electric space heating usage. (TrizecHahn Exhibit 1.0CR at 10, ln. 211-12). The Sears Tower, 2 N. LaSalle and other nonresidential customers should not be penalized for a full year for using electricity for space heating when they purchase electricity from a competitor of ComEd while they would not be so penalized if they were purchasing electricity from ComEd under its bundled tariffs. Under ComEd's Rider 25 – Electric Space Heating bundled tariff, there is no demand charge whatsoever for electric space heating use. (TrizecHahn Exhibit 1.0CR at 10, ln. 211-12). Therefore, adoption of the annual demand ratchet proposed by ComEd violates the statutory requirement of Section 16-108(c) of the Public Utilities Act that delivery services be priced on a nondiscriminatory basis regardless of whether

the retail customer chooses the electric utility or another entity as its electricity supplier. (220 ILCS 16-108(c)).

Although ComEd will continue to push the point that an annual demand ratchet is the proper way to allocate costs within a class, the fact is that ComEd has been billing both its space heating bundled services customers without demand charges for space heating use and its other nonresidential customers with demand charges based on their peak demands each month for many years. (ICC Docket No. 99-0117, August 26, 1999 Order at 60). Moreover, ComEd's cost-based argument is belied by the facts that many of the facilities in ComEd's distribution system are used by more than one customer, and that there is a diversity in demand among customers on ComEd's system. (ICC Docket No. 99-0117, August 26, 1999 Commission Order at 60). As a result of these facts, ComEd's system need not be built to meet the maximum peak demand of every customer regardless of when it occurs, and there is no need to base ComEd's charges on an annual demand ratchet which assesses demand charges based on a customer's maximum peak for twelve months (unless it is exceeded by another peak which would stand for twelve months unless exceeded, and so on) in order to properly allocate delivery services costs.

ComEd witnesses Paul Crumrine and Sally Clair admitted in their rebuttal panel testimony that "demand profiles would definitely have to be taken into consideration by some customers [in deciding between ComEd's delivery and bundled services] if a demand ratchet is included in Rate RCDS." (ComEd Exhibit 31.0 at 14, ln. 323-24). Just as importantly, customers who have already committed to delivery services under long-term contracts would now face an annual demand ratchet on their distribution facilities charges, while they did not face such a ratchet when they signed their contract for electricity supply from an alternative supplier. Perhaps most importantly, adoption of the annual demand ratchet would mean that one day of

extreme weather (in either the summer or winter) would govern ComEd's delivery services charges for an entire year.

For all these reasons, the Commission should reject ComEd's proposed annual demand ratchet on its distribution facilities charges. Instead, the Commission should order ComEd to assess its distribution facilities charges based on the highest peak in demand in a particular month as ComEd does currently.

2. Rate HVDS

Currently, customers who take delivery service at 69 kV or higher are eligible for ComEd's rider 11, which provides a credit of 10.138¢/kW on ComEd's demand charges for both delivery services and bundled services customers. (TrizecHahn Exhibit 1.0CR at 8, ln. 153-58). In this case, however, ComEd proposed a Rider HVDS – High Voltage Delivery Services (“Rider HVDS” or “HVDS”) which called for a \$2.65/kW credit based on an annual demand ratchet (ComEd Exhibit 13.0, Attachment C). While ComEd has reduced the requested credit somewhat in their surrebuttal testimony, it is still \$1.69/kW based on an annual demand ratchet (ComEd Exhibit 50.0, Attachment C page 3) and \$2.27/kW based on unratcheted demands (ComEd Exhibit 50.0, Attachment D page 3), clearly massive increases from the current credit of 10.138¢/kW which is now applicable to both delivery services and bundled services customers and would still be applicable to ComEd's bundled services customers under ComEd's proposal.

In its own inimitable style, ComEd has managed to design its HVDS credit in a manner that is highly discriminatory to over 10 MW customers who are ineligible for the credit. ComEd's proposed design forces these over 10 MW customers to shoulder the burden of the

revenues lost to ComEd as a result of a massive HVDS credit, resulting in a 82% increase in unratcheted distribution facilities charges from \$1.92/kW to \$3.50/kW for over 10 MW customers. (ComEd Exhibit 50.0, Attachment C page 3). On the other hand, these customers are not required to offset a large high voltage credit under ComEd's proposal if they purchase electricity supply (and delivery) from ComEd pursuant to its bundled tariffs. Adoption of ComEd's approach would clearly violate the provision of Section 16-108(c) of the Act requiring that delivery services be priced on a nondiscriminatory basis regarding whether the customer chooses the electric utility or an alternative entity as its electric supplier. (220 ILCS 5/16-108(c)). For this critical reason as well as the additional reasons stated below, the Rider 11 credit of 10.138¢/kW currently applicable to both delivery services and bundled services customers served at 69 kV or above should be left in place at this time.

a. Eligibility

The eligibility provision of ComEd's proposed Rider HVDS reads as follows:

For a nonresidential retail customer taking service under Rate RCDS – Retail Customer Delivery Services (Rate RCDS) for which the applicable Distribution Facilities Charge is provided on a dollar per kilowatt (\$/kW) basis and for which the Company line(s) enters the customer's premises at a voltage of 69,000 or higher, such customer shall be allowed a credit per kilowatt on that portion of the demand used for billing each month under Rate RCDS which is served from the line(s) entering the property at 69,000 volts or higher.

(ComEd Exhibit 13.0, Attachment C).

The language of the tariff unambiguously makes customers eligible for the credit if “the Company line(s) enters the customer's premises at a voltage of 69,000 or higher.” Although it is

undisputed in the record and acknowledged by ComEd that ComEd's lines do enter the Sears Tower at more than 69 kV, ComEd takes the position that the Sears Tower is ineligible for the credit on the grounds that the substation within the Sears Tower which is fed by ComEd's lines is not within the premises of the Sears Tower. (Tr. at 1098-1100). ComEd bases this position on its testimony that ComEd is leasing the plot of land on which the substation rests. (Tr. at 1100).

ComEd's argument is fallacious because the substation is within the Sears Tower and even though ComEd may have a lease for its space, the substation is still of course on the premises of the Sears Tower. However, since ComEd is the body that interprets its own tariffs in the first instance, ComEd's interpretation is of great significance to TrizecHahn and other similarly situated customers. ComEd's restricted interpretation of its own proposed tariff is a significant reason that the massive proposed HVDS credit must be rejected by the Commission.

b. Calculation of Credit

ComEd based its calculation of the HVDS credit on its breakdown of the costs of serving customers above and below 69 kV derived from its marginal cost study. (ComEd Exhibit 13.0 at 45, ln. 991-98). In surrebuttal testimony, ComEd recalculated the credit to reflect the fact that its largest customer had permanently ceased operations and therefore should not be reflected in the calculations. (ComEd Exhibit 32 at 9-10, ln. 174-193). Nevertheless, ComEd's calculation of its HVDS credit is still flawed for several reasons.

First, as IIEC witness Alan Chalfant testified, ComEd's marginal cost study itself is flawed because it is a calculation of replacement costs rather than marginal costs. (IIEC Revised Exhibit 2 at 14-20). Since ComEd's marginal cost study is a flawed study, it should not be used

to support the radical change in the high voltage credit for delivery services customers proposed by ComEd in this case.

Second, as TrizecHahn witness Larry Haynes testified, ComEd's approach is an inconsistent hybrid of size (i.e., peak demand)-based and voltage-based ratemaking. (TrizecHahn Exhibit 2.0 at 8, ln. 169-70). The reasons for rejecting such an approach were perhaps best summarized by ComEd witness Paul Crumrine in his testimony in ComEd's last delivery services case:

Bundled service Rider 11 provides a credit [of 10.138¢] to customers that are served at 69 kV voltage or higher. Rider 11 is also applicable to delivery services customers. Thus, ComEd's bundled service and delivery service customer classes based on size account for major differences in voltage levels among the customer classes with a special credit being given for customers served at high voltage....

(TrizecHahn Cross Exhibit 11.0 at 5, ln. 94-99).

Third, there are many customers served at or above 69 kV who actually have a higher cost of service than those served below 69 kV according to ComEd's own cost analysis. This is demonstrated by scatter diagrams presented by ComEd's own witnesses submitted in support of the credit which show that the cost of serving customers at or above 69 kV varies from under \$100/kW to over \$800/kW and the cost of serving customers below 69 kV varies from under \$200/kW to over \$1,000/kW. (ComEd Exhibit 13.0, Attachment N pages 2 and 3). In fact, ComEd witness Arlene Juracek admitted on cross-examination that there is no discernible pattern to the scatter diagram showing marginal distribution investment for below 69 kV customers which ComEd presented in support of its calculation of the HVDS credit. (Tr. at 3322).

Fourth, approval of the massive HVDS credit would work against ComEd's own stated goal of providing electricity service at the lowest possible cost. As ComEd witness Paul

Crumrine testified in ComEd's last delivery services case and under cross-examination in this case, "when providing service to customers, ComEd will use the appropriate voltage level that meets the customer's need at the lowest cost." (TrizecHahn Cross Exhibit 11.0 at 5, ln. 103-04; Tr. at 1091). This means that two customers with similar electrical needs may be served at 138 kV, from one or more 34 kV lines or even from multiple 12 kV feeders. (TrizecHahn Cross Exhibit 11.0 at 5, ln. 105-06; Tr. at 1091-92). According to Mr. Crumrine: "The deciding feature is which voltage level is most cost effective to use for a given customer's situation." (TrizecHahn Cross Exhibit 11.0 at 5, ln. 106-107; Tr. at 1092). Nevertheless, two customers with similar electrical needs will receive drastically different delivery charges if ComEd's proposed HVDS credit is approved (i.e., because one will receive the huge HVDS credit and the other will not) merely because of ComEd's decision on which is the most cost-effective way to serve the customer. Clearly, this not only is inequitable but also could cause ComEd to determine the voltage level at which to serve its customers based on the revenues generated for ComEd rather than a least-cost approach.

Fifth, as BOMA witness Sheree Brown testified, ComEd severely overstated the differences in costs between customers served at 69 kV and above and those who are served below 69 kV by allocating Transmission Distribution Centers ("TDCs") in its marginal cost study based on coincident peak demands and then inconsistently assuming that the TDC costs per kW were applied to the customers' maximum demands, rather than their coincident peak demands, in calculating the cost to serve 69 kV and above customers and those below the watermark. (BOMA Exhibit 1.0 at 20-24, ln. 431-515). When Ms. Brown corrected this error, the HVDS credit based on unratcheted demands was reduced from \$2.27 to \$1.53 and the corresponding unratcheted

distribution facilities charge for the over 10 MW class was reduced from \$3.50 to \$3.13.² (BOMA Exhibit 1.0 at 24, ln. 513-15).

In sum, there are five independent reasons why ComEd's rider HVDS is not cost-based. This is clearly a significant basis for the Commission's rejection of ComEd's proposed HVDS credit.

c. Allocation of Costs to Other Classes

As discussed supra, ComEd allocated all revenue requirement lost as a result of the 69 kV credit to the other customers in a particular class who were ineligible for the credit. (ComEd Exhibit 50.0 at Attachment C page 3 and Attachment D, page 3; Tr. at 1087-88). As a result, the thirty-one over 10 MW customers currently on delivery services who are ineligible for the credit have a massive proposed increase in their distribution facilities charges of 82% while the nine over 10 MW customers currently on delivery services who are eligible for the HVDS credit get a decrease in their distribution facilities charges from the current \$1.92/kW to \$1.23/kW assuming unratcheted demands. (Tr. at 1085-86; BOMA Exhibit 1.0 at 28, ln. 55-57; ComEd Exhibit 50.0, Attachment D page 3). This grossly disproportionate rate increase for ineligible customers clearly would cause rate shock and rate discontinuity, which is another strong basis for rejecting ComEd's proposed HVDS credit.

² Ms. Brown testified that this amount still has an excessive customer impact and, if adopted, should be phased-in with an initial HVDS credit of \$0.77/kW and a corresponding distribution facilities charge of \$2.75/kW for over 10 MW customers. (BOMA Exhibit 1.0 at 27-28, ln. 577-592).

e. Adoption Prior to Bundled Rate Tariff Change

Unless and until ComEd is ready to either propose the same changes in its bundled tariffs for high voltage customers that it proposes in its delivery services tariffs or propose a voltage-based system for all of its customers which has all classes based on voltage levels, the Commission should order ComEd to stick to the same size-based ratemaking approach now used in its bundled and delivery services tariffs (with a consistent credit for service at or above 69 kV of 10.138¢/kW for delivery and bundled service). (TrizecHahn Exhibit 2.0 at 8, ln. 177-181). This approach is far preferable to ComEd's discriminatory, anticompetitive and restrictive method proposed here which results in huge "winners" and "losers" based on whether a customer is above or below one particular voltage level and whether the customer is on delivery or bundled service.

CONCLUSION

WHEREFORE, for the above stated reasons TrizecHahn Office Properties Inc. respectfully requests that the Commission do the following:

- (a) reject ComEd's proposed Rider HVDS;
- (b) reject ComEd's proposed changes to its current Rider 11;
- (c) reject ComEd's proposed annual demand ratchet on its distribution facilities charges;
- (d) adopt the adjustments to ComEd's overall revenue requirement recommended in GC's Initial Brief;

- (e) to the extent that ComEd's revenue requirement is increased, allocate the same percentage revenue requirement increase granted to ComEd to all nonresidential customer classes, assign the remaining revenue requirement to the residential class and allocate this revenue requirement within the residential classes in proportion to the relative embedded cost shares within each class; and
- (f) initiate a management audit and investigation of ComEd pursuant to Section 8-102 of the Public Utilities Act.

Respectfully submitted,

TRIZECHAHN OFFICE PROPERTIES INC.

By: _____

GIORDANO & NEILAN, LTD.

Patrick N. Giordano

Paul G. Neilan

333 N. Michigan Avenue

Suite 2800

Chicago, Illinois 60601

PHONE: (312) 580-5480

FAX: (312) 580-5481

E-MAIL: patrickgiordano@dereglaw.com

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